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In re Application of  
YASUDA, et al.

Application No.: 10/521,947

PCT No.: PCT/JP03/09272

Int. Filing Date: 22 July 2003

Priority Date: 22 July 2002

For: COMPOSITION FOR PROMOTING THE  
PROLIFERATION OF LACTOBACILLUS  
CASEI SUBSP. CASEI

DECISION ON PETITION

UNDER 37 CFR 1.181

This decision is in response to applicant's petition filed 13 January 2006 in the United States Patent and Trademark Office (USPTO). The petition is being considered pursuant to under 37 CFR 1.181. No petition fee is required.

### **BACKGROUND**

On 22 July 2003, applicant filed international application PCT/JP03/09272 which claimed priority to an earlier Japanese application filed 22 July 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 29 January 2004. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 22 January 2005.

On 21 January 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an English translation of the international application and a preliminary amendment. An oath or declaration as required by 35 U.S.C. 371 (c)(4) was not filed.

On 18 July 2005 applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 13 January 2006, applicant filed the present petition under 37 CFR 1.181 indicating that an executed declaration and power of attorney was mailed on 18 February 2005 and an

additional copy was mailed on 09 August 2005.

### **DISCUSSION**

#### **I. Petition Filed 13 January 2006**

A review of the application file finds the submission mailed by applicant on 09 August 2005 contained therein. The filing is stamped with a USPTO date stamp "JC06 Rec'd PCT/PTO 15 AUG 2005" indicating receipt by the USPTO on 15 August 2005. Therefore, it is not necessary to consider applicant's present petition under 37 CFR 1.181 to accept the copy filed 13 January 2006 for the original petition filed 15 August 2005 and the present petition is **DISMISSED as moot.**

#### **II. Submission Filed 15 August 2005**

The submission of 15 August 2005 is being treated as a petition under 37 CFR 1.181 to accept the copy of declaration filed 15 August 2005 as a substitute for the declaration purportedly filed on 18 February 2005.

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. In the present case, applicant has not provided a stamped postcard receipt. In addition, the filing was not mailed as an Express Mail mailing from the U.S. Post Office. As applicant has not provided any proof that the first-class mailing containing the declaration was ever received by the USPTO, it is not possible to grant applicant's petition at this time. However, applicant's 15 August 2005 filing was a timely response to the Form PCT/DO/EO/905 mailed 18 July 2005. A review of the declaration finds that it is in compliance with 37 CFR 1.497 (a)-(b) and that with the filing of the declaration applicant has satisfied all of the 35 U.S.C. 371 requirements for entering the National stage in the United States.

### **CONCLUSION**

Applicant's petition under 37 CFR 1.181 filed 13 January 2006 is **DISMISSED as moot.**

Applicant's petition under 37 CFR 1.181 filed 15 August 2005 is **DISMISSED.**

Applicant is hereby afforded **TWO (2) MONTHS** from the mail date of this decision to file any request for reconsideration. Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.181."

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT

Legal Administration.

The application will be given an international filing date of 22 July 2003 under 35 U.S.C. 363 and a date of **15 August 2005** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the United States Designated/Elected Office (US/DO/EO) for further processing in accordance with this decision, namely the issuance of a "Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495" (Form PCT/DO/EO/903) indicating a 371 date as detailed above.



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